



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 32

RENTAL OF LIVING QUARTERS

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Portions of the Sales and Use Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1. Also attached are applicable Sales and Use Tax Rules.

The Maine Sales and Use Tax Law imposes a tax on "rental of living quarters in any hotel, rooming house, tourist or trailer camp." These terms are defined broadly enough to include any kind of living quarters provided for human use. Every person who manages or operates a hotel, rooming house, tourist camp or trailer camp, or who collects or receives rental payments on behalf of the owner, must collect Maine sales tax on the rentals.

1. NONTAXABLE RENTALS

a. Casual Rentals. A person who has only one room or a single camp for rent is not considered a "retailer" and is not required to collect sales tax on those rentals. If the property has been placed in the hands of a real estate agent or other person engaged in the business of renting or managing rentals of living quarters, that person must collect and report sales tax on the rentals.

b. Occupancy for 28 days or more. Rental charged to any person who resides continuously for 28 days or more in the same hotel, rooming house, tourist camp or trailer camp is nontaxable if the living quarters are the person's primary residence, or if the rental is in connection with education or employment. If tax has been paid by the person during the initial 28-day period, that tax should be refunded by the retailer (lessor). If the retailer (lessor) has reported and paid the tax to the State, the retailer should take a corresponding credit on the Sales and Use Tax Return filed for the period in which the refund or credit occurred by adjusting the 'Taxable Rentals' figure shown on the return. Continuous residence is not interrupted merely by changing rooms within the same hotel, rooming house, tourist camp or trailer camp.

"Primary residence" means the residence maintained at the location in which the person is domiciled. "Domicile" is the location where an individual has the most legal ties, ie. driver's license, voting registration, vehicle registration, ownership of real property, enrollment of children in school systems, etc.

Examples of situations where the tenant's primary residence is **not** the facility being rented are an out-of-state resident vacationing in Maine or a Maine resident with a home in Bangor who is vacationing on the coast.

Examples of situations where the tenant's primary residence **is** the facility being rented are a person renting a house, condominium or apartment (provided a primary residence is not maintained elsewhere) or an out-of-state resident who has moved to Maine and rents a room in a motel while searching for a new home.

"In connection with education" means in connection with education from an accredited secondary school or college at which the person is enrolled in a diploma or degree program. If a person claims that the rental is in connection with education, that person must provide the facility with a statement from the school that the tenant is enrolled in such a program.

"In connection with employment" means that the tenant is residing away from the tenant's primary residence due to job requirements. For example, an electrical contractor in northern Maine has a job in southern Maine, a professor is temporarily reassigned to another college, a representative of a company is temporarily assigned to Maine to oversee the installation and operation of their product. Seeking employment does not meet this requirement nor would making occasional business contacts while vacationing in Maine. If a person claims that the rental is in connection with employment, that person must provide the facility with a statement from the employer that the travel is necessitated by the person's employment and the purpose of the employment.

Continuous residence is determined by continuous rental of the quarters, rather than by actual occupancy of the quarters.

EXAMPLE: Smith Company rents a suite in a local hotel for use by its own out-of-town employees, or by out-of-town business associates. Rental is paid continuously by Smith Company although the suite is not always occupied; and, when occupied, the individual occupant never remains for more than a few days. Since the rental of the suite is in connection with employment, after Smith Company has rented the suite continuously for 28 days any tax already paid by it with respect to the rental is refundable, and any charges for continuous rental thereafter will be nontaxable.

c. Living Quarters Furnished to Employees. Tax does not apply to rentals of living quarters that are furnished by an employer to an employee, at premises controlled by the employer, and solely for the convenience of the employer. It does not matter whether there is any adjustment of the employee's wages for the value of the living quarters. This applies only to living quarters furnished to employees, not to meals sold to employees. (Tax does not apply to the value of meals furnished by the employer to employees at the place of employment if the value of the meals is allowed as a credit toward the wages of the employees.)

d. Specific Exemptions. The following rentals are exempt from tax:

- i. Rentals of living quarters at camps that are entitled to exemption from property tax as literary and scientific or benevolent and charitable institutions, or by children's camps that have been determined to be 'schools' within the meaning of 36 M.R.S.A. 1760(6-A).
- ii. Rentals of living quarters at an institution licensed by the State for hospitalization or nursing care of human beings.
- iii. Rentals of living quarters to a student necessitated by the student's attendance at a primary or secondary school or college.

2. OTHER CHARGES IN CONNECTION WITH RENTALS OF LIVING QUARTERS

a. Incidental Charges at Hotels and Motels. When a hotel or motel offers separate facilities or services (such as a golf course, tennis courts, telephones and pay-per-view movies) that are not a part of the rental of living quarters, and where any charges for those facilities or services are in fact extra and are paid only by persons who make use of them and are shown as a separate item on the bill, those charges are not subject to tax.

Tax does apply to the amount billed for extra services that are a part of the rental of a room in a hotel, motel or boarding house, whether or not separately stated. Some examples of services that are considered a part of the rental of living quarters include extra charges for use of a cot or crib or for use of cooking facilities.

b. Rentals of Public Rooms. Rental by a hotel or motel of a dining room, assembly room or other area not intended for use as living quarters is not taxable. When a hotel or motel rents a room designed as living quarters, the rental will be considered taxable regardless of the use actually made of the room by the person renting it.

c. Combined Room and Meals. When rentals taxable at the 7% rate are made in conjunction with other sales taxable at the general sales tax rate, as in the case of "American plan" or "bed and breakfast" accommodations, the entire charge is taxable at the 7% rate unless the retailer separately and reasonably accounts for the sales in each category. At hotels and motels that are licensed to serve alcoholic beverages for on-premises consumption, charges for meals and drinks are taxable at the 7% rate.

d. Rentals of Videotapes and Video Equipment. The Maine sales tax applies to rentals of videotapes, video games and video equipment for noncommercial playback. A hotel or motel that rents any of these items must collect sales tax on the rentals. Taxable rentals include not only rentals of movie videocassettes and videocassette players, but also rentals of video equipment for use at business conferences, seminars and the like.

Purchases of videotapes and video equipment for rental by a hotel or motel are not taxable.

e. Tent and Trailer Space. The rental of space for the pitching of tents or the parking of motor homes, travel trailers and camper trailers is taxable. The rental price includes all service charges paid to the lessor, whether or not those charges are separately collected or stated. If the tents or trailers themselves are rented, that rental is also taxable.

3. PURCHASES

On purchases by a hotel or motel of tangible personal property used in the business, including items such as soap, towels and paper products intended for use by hotel or motel occupants as well as office supplies, cleaning and maintenance supplies and similar items, tax should be paid to the supplier on the purchase. If these items are purchased outside the state and the tax is not collected by the supplier, it must be reported on the sales and use tax return.

4. ADDITIONAL INFORMATION.

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to the:

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<p>The Department of Administrative and Financial Services does not discriminate on the basis of disability in admission, to access to, or operation of its programs, services or activities.</p>

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ATTACHMENT #1
Excerpts taken from 36 M.R.S.A.

36 M.R.S.A §1752 - Definitions

4. Hotel. "Hotel" means every building or other structure kept, used, maintained, advertised as or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests and tenants.

6. Living quarters. "Living quarters" means sleeping rooms, sleeping or housekeeping accommodations, and tent or trailer space.

12. Rooming house. "Rooming house" means every house, boat, vehicle, motor court, trailer court or other structure or any place or location kept, used, maintained, advertised or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests or tenants, whether in one or adjoining buildings.

17-A. Taxable service. "Taxable service" means:

A. Rental of living quarters in any hotel, rooming house, tourist or trailer camp;

G. Rental of video tapes and video equipment;

19. Tourist camp. "Tourist camp" means a place where tents or tent houses, or camp cottages or other structures are located and offered to the public or any segment thereof for human habitation.

20. Trailer camp. "Trailer camp" means a place where space is offered with or without service facilities to the public for tenting or for the parking and accommodation of automobile trailers which are used for living quarters and the rental price shall include all service charges paid to the lessor.

23. Video tapes; video equipment. "Video tapes" means prerecorded magnetic tapes used for noncommercial playback of images and sound on video equipment. It also includes other electronic audio and video media that provide for noncommercial interactive utilization by a person or persons. "Video equipment" means equipment used to play back video tapes, equipment used for recording images and sound for subsequent noncommercial playback and equipment used for noncommercial interactive utilization of electronic audio and video media.

36 M.R.S.A. §1760 - Exemptions

17. Camps. Rental charged for living quarters, sleeping or housekeeping accommodations at camps entitled to exemption from property tax under section 652, subsection 1.

18. Certain institutions. Rental charged for living or sleeping quarters in an institution licensed by the State for the hospitalization or nursing care of human beings.

19. Schools. Rental charged for living quarters, sleeping or housekeeping accommodations to any student necessitated by attendance at a school as defined in subsection 16.

20. Continuous residence; refunds and credits. Rental charged to any person who resides continuously for 28 days at any one hotel, rooming house, tourist or trailer camp if:

- A. The person does not maintain a primary residence at some other location; or
- B. The person is residing away from that person's primary residence in connection with employment or education.

Tax paid by such person to the retailer under section 1812 during the initial 28-day period must be refunded by the retailer. Such tax reported and paid to the State by the retailer may be taken as a credit by the retailer on the report filed by the retailer covering the month in which refund was made to such tenant.

This subsection applies to all rentals of any hotel, rooming house or tourist or trailer camp for occupancy on or after July 1, 1991 regardless of the date on which payment for the rental is made.

75. Certain meals and lodging. Meals or lodging provided to employees at their place of employment when the value of those meals or that lodging is allowed as a credit toward the wages of those employees.

36 M.R.S.A. §1811 - Sales tax

(TEXT EFFECTIVE 7/1/00) A tax is imposed on the value of all tangible personal property and taxable services sold at retail in this State. The rate of tax is 7% on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title 28-A, chapter 43; 7% on the value of rental of living quarters in any hotel, rooming house, tourist or trailer camp; 10% on the value of rental for a period of less than one year of an automobile; 7% on the value of prepared food sold in establishments that are licensed for on-premises consumption of liquor pursuant to Title 28-A, chapter 43; and 5% on the value of all other tangible personal property and taxable services. Value is measured by the sale price, except as otherwise provided. [1999, c. 401, Pt. X, §1 (amd); §5 (aff).]

The tax imposed upon the sale and distribution of gas, water or electricity, or telecommunications services, by any public utility, the rates for which sale and distribution are established by the Public Utilities Commission, must be added to the rates so established. No tax may be imposed upon the sale or use of electrical energy, or water stored for the purpose of generating

electricity, when the sale is to or by a wholly owned subsidiary by or to its parent corporation, except for electrical energy or water purchased for resale to or by such wholly owned subsidiary. [1999, c. 488, §11 (amd).]